

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	Chapter 11
PILLOWTEX, INC., <i>et al.</i> , ¹	Case No. 03-12339 (PJW) (Jointly Administered)
Debtors.	Ref. Nos. 523 & 1549
<hr/> PILLOWTEX CORPORATION and FIELDCREST CANNON, INC.,	
Plaintiffs,	
v.	Adv. No. 03-57581-PJW
TARGET CORPORATION ² and MERVYN'S, INC.,	Ref. No. 68
Defendants.	

**DESIGNATION OF RECORD AND STATEMENT OF ISSUES PRESENTED ON
APPEAL OF MERVYN'S INC. FROM ORDER AND JUDGMENT
(A) AWARDING DAMAGES TO PLAINTIFFS AND
(B) DENYING CERTAIN PENDING MOTIONS.**

Mervyn's, Inc. ("Defendant"), by and through the undersigned counsel, pursuant to Federal Rule of Bankruptcy Procedure 8006, hereby designates the record and issues presented on appeal to the United States District Court for the District of Delaware from the *Order and Judgment (A) Awarding Damages to Plaintiffs and (B) Denying Certain Pending Motions [D.I. Nos. 1549 (Case No. 03-12339) and 68 (Adv. No. 03-57581)]*, dated May 27, 2005 and entered in

1 In addition to Pillowtex Corporation and Fieldcrest Cannon, Inc., the other debtors are Beacon Manufacturing company, Encee, Inc., FC Online, Inc., FCC Canada, Inc., FCI Corporate LLC, FCI Operations LLC, Fieldcrest Cannon Financing, Inc., Fieldcrest Cannon Licensing, Inc., Fieldcrest Cannon Transportation, Inc., The Leshner Corporation, Opelika Industries, Inc., PTEX Holding Company, PTEX, Inc., and Tennessee Woolen Mills, Inc. (collectively, "Debtors"). The United States Trustee appointed an Official Committee of Unsecured Creditors in these cases on August 11, 2003. Debtors continue in the management of their businesses and properties as debtors in possession pursuant to Section 1107 (a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of Debtors' cases.

2 Defendant Target Corporation is no longer a party to this action pursuant to the Stipulation and Order entered by the Court on March 1, 2005 (A.D.I. 22). Defendant Mervyn's, Inc. formerly was a wholly owned subsidiary of Target Corporation, but is now an independent entity known as Mervyn's LLC and represented by separate counsel.

the above-captioned main and adversary proceedings on May 31, 2005,³ by United States Bankruptcy Judge Peter J. Walsh (the “Order”). The Order, with respect to Defendant (a) denied Defendant’s Markdown Claims⁴ and Lost Profits;⁵ (b) denied the Motion of Target Corporation and Mervyn’s, Inc. for Precautionary Relief from the Automatic Stay to Recoup Their Damages from Amounts Payable to the Debtors [D.I. 523 in main proceeding]; (c) ordered Defendant to pay Plaintiffs the sum of \$810,000.00, with judgment entered in favor of Plaintiffs; and (d) denied as moot, the parties’ cross-motions for summary judgment.

I. DESIGNATION OF THE RECORD

Mervyn’s Inc. hereby designates the following items to be included in the record:

Designation of Record			
Designated No.	Date of Filing	Docket No.	Description
1	10/23/03	Case No. 03-12339 (PJW) 523	Notice of Motion and Motion of Target Corporation and Mervyn’s, Inc. for Precautionary Relief from the Automatic Stay to Recoup their Damages from Amounts Payable to the Debtors
2	10/23/03	Case No. 03-12339 (PJW) 523	Affidavit of Dan Epley in Support of the Motion of Target Corporation and Mervyn’s Corporation for Precautionary Relief from the Automatic Stay to Recoup their Damages from Amounts Payable to the Debtors

³ The actual docket entry date of the Order in the adversary proceeding is June 3, 2005. In accordance with the Court’s instruction, however, Mervyn’s, Inc. is treating this appeal as if the Order had been entered May 31, 2005 on both the main and adversary dockets.

⁴ As defined in the Stipulation and Order Regarding Net Amount Payable, entered on May 10, 2005, “Markdown Claims” are retail price “markdowns” that Mervyn’s claims it made to liquidate inventories of goods manufactured by and purchased from Plaintiffs.

⁵ As defined in the Stipulation and Order Regarding Net Amount Payable, entered on May 10, 2005, “Lost Profits” are profits that Mervyn’s claims it could have made from the future purchase and retail sale of additional goods manufactured by Plaintiffs.

3	10/23/03	Case No. 03-12339 (PJW) 523	Affidavit of Christi Langstaff in Support of the Motion of Target Corporation and Mervyn's Corporation. for Precautionary Relief from the Automatic Stay to Recoup their Damages from Amounts Payable to the Debtors
4	10/23/03	Case No. 03-12339 (PJW) 523	Affidavit of Kelly Geademann in Support of the Motion of Target Corporation and Mervyn's Corporation. for Precautionary Relief from the Automatic Stay to Recoup their Damages from Amounts Payable to the Debtors
5	11/05/03	Adv. Proc. No. 03- 57581(PJW) 1	Complaint by Pillowtex Corporation and Fieldcrest Cannon, Inc. Against Target Corporation and Mervyn's Inc.,
6	12/04/03	6	Answer of Target Corporation and Mervyn's, Inc. to Adversary Complaint of Pillowtex Corporation and Fieldcrest Cannon, Inc.
7	04/18/05	26	Motion for Summary Judgment Filed by Mervyn's Inc.
8	04/18/05	27	Exhibits re Motion for Summary Judgment
9	04/18/05	28	Motion to Allow Judicial Notice in Support of Motion for Summary Judgment
10	04/18/05	29	Declaration of Paula Brouillard in Support of Motion for Summary Judgment
11	04/18/05	30	Declaration of Christi Langstaff in Support of Motion for Summary Judgment
12	04/18/05	31	Memorandum of Law in Support of Motion for Summary Judgment
13	04/19/05	32	Motion for Partial Summary Judgment, or Alternatively, to Strike Certain Affirmative Defenses Filed by Pillowtex Corporation and Fieldcrest Cannon, Inc.
14	04/19/05	33	Memorandum of Law in Support of Their Motion for Partial Summary Judgment, or Alternatively, to Strike Certain Affirmative Defenses Filed by Pillowtex Corporation and Fieldcrest Cannon, Inc.
15	04/19/05	34	Declaration of Suzanne M. Grosso
16	04/19/05	35	Declaration of R. John Wahoski
17	04/20/05	36	Notice of Service re Pillowtex Corporation and Fieldcrest Cannon, Inc. Motion for Summary Judgment
18	04/27/05	43	Mervyn's LLC's Memorandum of Points and Authorities in Opposition to Plaintiffs'/Debtors' Motion for Partial Summary Judgment or, Alternatively, to Strike Certain Affirmative Defenses
19	04/27/05	44	Declaration of Karen Johnson-McKewan in Opposition to Plaintiffs'/Debtors' Motion for Partial

			Summary Judgment or, Alternatively, to Strike Certain Affirmative Defenses
20	04/27/05	45	Mervyn's LLC's Objections to Evidence Proffered in Support of Plaintiffs'/Debtors' Motion for Partial Summary Judgment or, Alternatively, to Strike Certain Affirmative Defenses
21	04/28/05	46	Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment
22	04/28/05	47	Affidavit of R. John Wahoski in Support of Plaintiffs' Opposition
23	04/28/05	48	Declaration of Suzanne M. Grosso in Support of Plaintiffs' Reply Memorandum in Opposition to Defendant Mervyn's Motion for Summary Judgment
24	04/28/05	49	Motion to Appear <i>Pro Hac Vice</i> of Melissa S. Tidwell
25	05/02/05	50	Reply Brief in Support of Motion for Summary Judgment, or in the Alternative Partial Summary Judgment
26	05/02/05	51	Declaration of E. Anne Hawkins in Support of Mervyn's LLC's Reply Brief in Support of Motion for Summary Judgment, or in the Alternative Partial Summary Judgment
27	05/02/05	52	Affidavit of R. John Wahoski Dated April 27, 2005
28	05/02/05	54	Notice of Completion of Briefing
29	05/02/05	55	Plaintiffs' Reply Memorandum of Law in Further Support of Their Motion for Partial Summary Judgment, or Alternatively, to Strike Certain Affirmative Defenses
30	05/02/05	56	Plaintiffs' Opposition to Defendant's Objections to Evidence Proffered in Support of Pillowtex's Motion for Summary Judgment
31	05/02/05	57	Plaintiffs' Motion in Limine to Preclude Defendant from Offering into Evidence the Sales Projections Underlying Mervyn's Lost Profit Damages
32	05/10/05	65	Stipulation and Order Regarding Net Amount Payable
33	05/19/05	67	Transcript of Trial Before Honorable Peter J. Walsh
34	06/03/05	68	Order and Judgment Awarding Damages to Plaintiffs and Denying Certain Pending Motions
35	06/09/05	69	Notice of Appeal from Order and Judgment Awarding Damages to Plaintiffs and Denying Certain Pending Motions

**Trial Exhibits Admitted into Evidence in Connection with
Trial But Not Docketed**

Designated No.		Exhibit No.	Description
36		D-500	02/13/02 Conditions of Contract
37		D-502	07/23/03 E-mail from B. Dupre to N. Taylor, D. Jurgens and J. Thomas re Total Close
38		D-505	05/03 Vendor Partnership Manual: Accounts Payable Requirements Recap
39		D-507	07/28/03 E-mail from L. Leneau to M. Norton and Others re Pillowtex/Fieldcrest Bankruptcy
40		D-568	04/25/01 Letter from Keith C. Leal to Christi Langstaff
41		D-583	10/03/00 Financial Vendor Agreement
42		D-584	10/03/00 Financial Vendor Agreement
43		D-585	06/01/01 Financial Vendor Agreement
44		D-586	06/01/01 Financial Vendor Agreement
45		D-587	06/01/01 Financial Vendor Agreement
46		D-588	06/01/01 Financial Vendor Agreement
47		D-589	06/01/01 Financial Vendor Agreement
48		D-590	06/01/01 Financial Vendor Agreement
49		D-591	07/10/01 Financial Vendor Agreement
50		D-592	07/31/01 Financial Vendor Agreement
51		D-593	07/31/01 Financial Vendor Agreement
52		D-594	07/31/01 Financial Vendor Agreement
53		D-595	12/20/01 Financial Vendor Agreement
54		D-596	01/30/02 Financial Vendor Agreement
55		D-597	02/01/02 Financial Vendor Agreement
56		D-598	02/01/02 Financial Vendor Agreement
57		D-599	03/05/02 Financial Vendor Agreement
58		D-600	03/05/02 Financial Vendor Agreement
59		D-601	03/25/02 Financial Vendor Agreement
60		D-602	03/25/02 Financial Vendor Agreement
61		D-603	03/25/02 Financial Vendor Agreement
62		D-604	03/25/02 Financial Vendor Agreement
63		D-605	06/15/02 Financial Vendor Agreement
64		D-606	07/01/02 Financial Vendor Agreement
65		D-607	07/01/02 Financial Vendor Agreement
66		D-608	10/01/02 Financial Vendor Agreement
67		D-609	10/01/02 Financial Vendor Agreement
68		D-610	01/00/03 Financial Vendor Agreement and Co-Op Authorization
69		D-611	02/19/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)

70		D-612	02/19/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)
71		D-613	03/20/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)
72		D-614	03/20/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)
73		D-615	04/22/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)
74		D-616	04/22/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)
75		D-617	05/15/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)
76		D-618	05/15/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)
77		D-619	06/18/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)
78		D-620	06/18/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)
79		D-621	07/21/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)
80		D-622	07/21/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)
81		D-623	08/12/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)
82		D-624	08/12/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)
83		D-625	08/12/03 Financial Vendor Agreement - Fieldcrest, Towels (Allowance Update)

ADDITIONAL ITEMS

84		D-514	05/11/04 Additional Documents Supporting Mervyn's Damages for Markdowns and Lost Profits
85			Docket Sheet for Adv. No. 03-57581-PJW

II. STATEMENT OF ISSUES ON APPEAL

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, the following is the statement of issues presented by this appeal:

1. Whether the Bankruptcy Court erred in denying Defendant's Markdown Claims and Lost Profits, and finding that Defendant is not entitled to any recoupment or setoff from amounts otherwise payable to Plaintiffs.
2. Whether the Bankruptcy Court erred in denying the Motion of Target Corporation and Mervyn's, Inc. for Precautionary Relief from the Automatic Stay to Recoup Their Damages from Amounts Payable to the Debtors [D.I. 523 in main proceeding].
3. Whether the Bankruptcy Court erred in ordering Defendant to pay Plaintiffs the sum of \$810,000.00, with judgment entered in favor of Plaintiffs.
4. Whether the Bankruptcy Court erred in denying as moot, the parties' cross-motions for summary judgment.
5. Whether the Bankruptcy Court erred in finding that documentary evidence proffered by Defendant at the Trial (the "Evidence") in support of Markdown Claims and Lost Profit Claims and the conclusions drawn from that Evidence, are fundamentally flawed and cannot support an accurate calculation of any such damages.

6. Whether the Bankruptcy Court erred in holding, that as a result of finding the Evidence Inadmissible, the testimony regarding such Evidence cannot be given weight by the Court.

Dated: Wilmington, Delaware
June 16, 2005

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